



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Office of the
Secretary

Phone: (302) 739-9000
Fax: (302) 739-6242

Secretary's Order No. 2006-A-0046

Re: Withdrawal of August 1, 2001, Proposed Amendment to Air Pollution Control Regulations, Which Proposed Regulating Volatile Organic Compounds Emissions From Lightering Operations.

Date of Issuance: October 16, 2006

Effective Date: October 16, 2006

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 *Del. C.* §§8001 et seq., 29 *Del. C.* §§10111 *et seq.* and 7 *Del. C.* §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

On January 12, 2001, the Department issued a Start Action Notice ("SAN") 2000-23 to amend *Regulations Governing Air Pollution Control* ("Regulations"). The regulatory development process resulted in the Department proposing a new Section 46 to Regulation No. 24 of the Regulations. This amendment would regulate the air emissions of volatile organic compounds ("VOC") that may be released during lightering operations, which are operations to transfer cargo (normally petroleum products) from larger ships to smaller ships so that the ships may deliver the products to shallower locations along the Delaware Bay. The Department's regulatory development process resulted in the August 1, 2001, publication of a proposed regulation in the *Delaware*

Register of Regulations. In addition, the Department held a public hearing on August 30, 2001, and the public comment period remained open until August 31, 2001.

The Department reviewed the extensive public comments on the proposed regulation. Based upon the public comments, the Department decided to revise the proposed regulation. The revision resulted in a complete redrafting of the proposed regulation. The Department's revision will be published November 1, 2006, in the *Delaware Register of Regulations.*

The Department also determines that sound public policy supports withdrawal of the proposed regulation, as published August 1, 2001. Without the withdrawal, there would be two public hearing records and two proposed regulations pending the Department's final decision. The Department determines that only one proposed regulation should be pending final decision, and that the November 1, 2006, proposed regulation is the one that should remain pending as it best reflects the Department's statutory purposes. This Order withdraws the August 1, 2001, proposed regulation, which together with the November 1, 2006, proposed regulation will have only one proposed regulation and public hearing record pending, as opposed to considering two proposed regulations and two public hearing records.

The withdrawal of the August 1, 2001, proposed regulation is because it is no longer applicable as it has been superseded by the November 1, 2006, proposed regulation. The Department took the time to carefully consider the public comments, and developed a better proposed regulation. The record developed on the August 1, 2001, proposed regulation and public hearing now is stale and not relevant to the revised November 1, 2006, proposed regulation. Consequently, it is not appropriate to include the prior proposed regulation's public hearing record as part of the November 1, 2006, proposed regulation to be published in the *Delaware Register of Regulations.*

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary and 29 *Del C. §10118(d)*, hereby withdraws the proposed regulation published in the Delaware Register of Regulations on August 1, 2001, and its associated public hearing record,

2. The Department shall have this Order published in the Delaware Register of Regulations and in newspapers in the same manner as the notice of a proposed regulation;

3. The Department shall provide notice to the persons affected by the Order, as determined by the Department, including all those who submitted comments to the Department, who otherwise participated in the August 30, 2001, public hearing, and who requested to receive notice of all actions on a proposed regulation.

s/ John A. Hughes

John A. Hughes,
Secretary